

CANADA / JUDGMENT

TB9-28154

COURT

Refugee Appeal Division

DECIDED

2 December 2020

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RAD File / Dossier de la SAR : TB9-28154 TB9-28155 / TB9-28156 / TB9-28157 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision December 2, 2020 Date de la décision Panel D. Morris Tribunal Counsel for the persons who are the subject of the appeal Orr Kolesnik Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] I allow this appeal. XXXX XXXX XXXX (the Principal Appellant), his wife, XXXX XXXX XXXX, (the Associate Appellant) and their daughter XXXX XXXX XXXX and their son XXXX XXXX XXXX (the Minor Appellants) are citizens of Nigeria. They appeal a decision of the Refugee Protection Division (RPD), dated 3 October 2019, which rejected their claims for refugee protection.
- [2] The Appellants fear persecution in Nigeria at the hands of Fulani herdsmen due to their religion. The Appellants are Pentecostal Christians whose former home was in XXXX, Plateau State.
- [3] On XXXX XXXX 2010, the Associate Appellant and her daughter were shopping in XXXX when a bomb targeting Christians went off. They were traumatized but not physically injured.
- [4] In XXXX 2012 the Appellants' church was bombed. The Associate Appellant was cut in the blast.
- [5] The Associate Appellant and the Minor Appellants then relocated to XXXX, Ondo State, while the Principal Appellant remained in XXXX. On XXXX XXXX 2016, the Principal Appellant was kidnapped by Fulani militia on his way to work. After a ransom was paid, the Principal Appellant was released and hospitalized for two days. The Principal Appellant was targeted for kidnapping on two further occasions but was able to escape.
- [6] The Appellants left Nigeria and arrived in Canada on XXXX XXXX 2018. RPD Decision

- [7] The RPD found that Internal Flight Alternative (IFA) was determinative of the Appellants' claims. It found that Port Harcourt was a viable IFA. It found that there was insufficient evidence to show that the Fulani herdsmen had the means or motivation to locate the Appellants in Port Harcourt. It found that relocation to Port Harcourt was reasonable under the circumstances. Grounds of Appeal
- [8] The Appellants' arguments may be summarized as follows:
- i. The RPD ignored the most current objective documentary evidence; ii. The RPD failed to consider the totality of the evidence; iii. The RPD misapprehended or misconstrued the supporting evidence. NEW EVIDENCE None of the evidence presented by the Appellants is accepted
- [9] The Appellant seeks to have five news articles admitted into new evidence:
- i. Woman Battles For Survival After Attack In Port Harcourt, Latest Alert, Azeez Imran, dated 21 July 2019; ii. Herdsmen attack Rivers community, abduct woman, Punch, Chukwudi Akasike, dated 4 June 2018; iii. Fulani herdsmen, criminals invade Rivers' nursing school at will, Vanguard, Davies Iheamnachor, dated 31 January 2017; iv. Insecurity: Threats of war by ethnic, religious groups over government's (in)action, Punch, Femi Makine, dated 14 July 2019;
 - v. "World Take Note!": Genocide of Christians in Nigeria, Gatestone Institute, Raymond Ibrahim, dated 6 October 2019.
- [10] I have determined that none of these articles is admissible.
- [11] According to the law,¹ I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [12] If the evidence meets one or more of these requirements, I must determine if the evidence is new, credible and relevant before I can accept it.²
- [13] The first four articles pre-date the Appellant's RPD hearing. They therefore arose prior to the RPD's decision and, being in the public domain, were reasonably available at the time. The Appellants argue they could not reasonably have been expected to provide these articles prior to the rejection. They make no submissions as to why this is so. The Appellants assert that if this evidence was before the RPD it might justify accepting the Appellants' claims.
- [14] Even if I were to accept that this evidence would have resulted in the RPD accepting the Appellants' claims, which I do not, this is simply not the test that I am bound by the legislation to apply. The Appellant's have failed to show why they could not reasonably have submitted this documentation prior to the RPD's rejection of their claim. As a result, it will not be admitted.

- [15] The fifth article - from the Gatestone Institute - meets the requirements of the legislation since it arose on 6 October 2019 - three days after the date of the decision: 3 October 2019. However, I find the source of the article, Gatestone Institute, is not credible.
- [16] Gatestone refers to itself as an "International Policy Council."³ A research project on Islamophobia at Georgetown University reports as follows: A September 2017 article in The Intercept by investigative journalist Lee Fang found that Gatestone published articles "focused on stoking fears about immigrants and Muslims." In another article from 2018, Fang noted Gatestone was "infamous for its role in publishing 'fake news' and spreading hate about Muslims." Fang also found that Gatestone's anti-Muslim content had been regularly promoted by politicians, including members and affiliated online groups, of the far-right German party, Alternative for Germany (AfD).⁴
- [17] Material on Gatestone's website includes numerous articles which, although presented as independent and unbiased, when examined more closely, promote an unstated far-right political agenda.⁵ The online resource Media Bias/Fact Check lists Gatestone as a questionable source, "... based on extreme right wing bias, promotion of propaganda and conspiracies, poor sourcing, a lack of transparency and the publication of misleading or false information regarding Muslims."⁶
- [18] I find Gatestone Institute is not a reliable source of credible information. This article will not be admitted into evidence. ORAL HEARING
- [19] Section 110(6) of the Immigration and Refugee Protection Act⁷ provides that the Refugee Appeal Division (RAD) may hold a hearing only where new evidence has been admitted. As no new evidence has been admitted I have no jurisdiction to hold an oral hearing.
- [20] The Appellants' request for an oral hearing is therefore denied.

ANALYSIS

- [21] My role is to look at all the evidence and decide if the RPD made the correct decision.⁸
- [22] I find the RPD erred in determining that Port Harcourt is a reasonable IFA under all the circumstances.
- [23] The test for assessing an IFA consists of two parts:⁹
- (1) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subjected to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.

- (2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for her to seek refuge there.¹⁰
- [24] Both prongs must be satisfied to find that the Appellants have a viable IFA.
- [25] The Appellants bear the onus of adducing evidence to show, on a balance of probabilities, that a serious possibility of harm exists in the proposed IFA and that the proposed IFA is unreasonable in all the circumstances.
- [26] The RPD considered and applied the then Jurisprudential Guide with regard to the existence of a possible IFA in Nigeria for persons who fear non-state actors (the decision).¹¹ This decision has, since the filing of the Appellants' Record, been revoked as a Jurisprudential Guide. Therefore, while I have considered the decision in my assessment, I am not bound to follow its reasoning or to provide reasons for not following it.
- [27] As regards the first prong of the test, I am prepared to accept, for purposes of this analysis, that the Appellants do fear Fulani herdsman. I find the Principal Appellant's Basis of Claim (BOC) narrative and testimony credible as it relates to his kidnapping and the more general attacks that the Associate Appellant was caught up in. I find this evidence is generally consistent with the objective documentation regarding attacks by Fulani against Christians in Plateau State. However, the question is whether the Fulani would have the means or motivation to track down and harm the Appellants in Port Harcourt.
- [28] The Principal Appellant testified that the Fulani herdsman had a network throughout the country, that they were everywhere, and that they had an agenda to kill Christians in Nigeria.
- [29] Fulani herdsman are nomadic pastoralists and mostly Muslim. The evidence shows the Fulani conflict is largely concentrated in the North Central and North East region with some incidents in other states including "Delta, Edo, Ekiti, Kaduna and Kogi."¹² While there have been reports of the conflict affecting more than 20 states, they are mainly concentrated in five states: Adamawa, Plateau, Tabara, Nasarawa and Benue.¹³
- [30] Civilians on both sides of the conflict have been targeted and killed.¹⁴ Some sources assert the reason behind the conflict is an expansionist Islamic policy to evict Christian farmers from their lands. Other sources, such as the United Nations High Commissioner for Refugees, indicate the conflict is basically one of co-existence, driven by a lack of resources, desertification, "ambiguous" land legislation, and a "weak" rule of law."¹⁵
- [31] The BBC reports that, "... while talks of 'genocide against Christians' is a widely touted refrain, it falls short of being supported by facts; there have been many killings on both sides in this conflict."¹⁶

- [32] I find that there is certainly a religious element to the conflict. However, there is no indication that Christians in Port Harcourt who have fled the violence in the north, of which there are many,¹⁷ have been pursued by the Fulani. I do not find any mention in the sources of Fulani herdsmen tracking individuals from state to state as the Appellants allege. Instead, the sources provide details of attacks against and between communities. I accept that the groups on both sides perpetrate violence. However, I find the Fulani's area of influence does not extend to Port Harcourt.¹⁸
- [33] I find the Principal Appellant has exaggerated the Fulani's ability to locate him. I find no credible support in the documentation for the existence of a network whereby Fulani herdsmen have tracked down any particular individual in Port Harcourt or elsewhere.
- [34] Although their submissions are unclear, the Appellants appear to argue that the RPD ignored or misconstrued evidence. However, the burden is on the Appellants to provide evidence that shows a serious possibility that herdsmen would pursue them to Port Harcourt. I have reviewed the documentation referred to in the Appellants' memorandum. The Appellants have not pointed to any evidence that Christians fleeing the violence in Plateau State, or other Northern or Middle Belt states, have been pursued by Fulani herdsmen. Accordingly, I find that the evidence is not sufficient to establish the Appellants would be at serious risk of persecution or other harm in Port Harcourt.
- [35] I find that the RPD correctly concluded that the Appellants have not established that they would face a serious possibility of persecution, nor, on a balance of probabilities, a risk to life, danger of torture, or of cruel and unusual treatment or punishment in Port Harcourt from the Fulani herdsmen.
- [36] The Appellants fail on the first prong of the test. IFA in Port Harcourt is unreasonable
- [37] However, considering the Appellant's circumstances, I find that Port Harcourt is not a reasonable IFA. I therefore find the Appellants have met their burden on the second prong of the test. The factors that I have considered in coming to this conclusion are indigeneity, education and employment prospects, the effect of relocation on the children and the security situation in Rivers State and Port Harcourt.
- [38] I find the RPD erred in determining that indigeneity is not a significant barrier to relocation within Nigeria.
- [39] Nigerians distinguish between indigenes (or natives) and non-indigenes (or settlers) of regions or states. One's indigeneity is determined by the place of origin of one's parent and is therefore closely tied to ethnicity. The evidence adduced in this case shows that the Appellants are ethnically Yoruba. The Principal Appellant is an indigene of Oke-Agbe/Ondo. The Associate Appellant of Osun. Ondo and Osun are in the southwestern part of Nigeria where the Yoruba form the largest ethnic group. Rivers State, where Port Harcourt is located, is primarily ethnically Ogoni and Ijaw. The Appellants would be regarded as non-indigenes in Port Harcourt.

- [40] Access to employment, housing and other government services such as education may all be subject to de facto restrictions for non-indigenes. Although the RPD found that the objective documentation was mixed with regard to indigeneity, I find the more recent National Documentation Package (NDP) less equivocal.
- [41] ..."[t]hroughout Nigeria, public institutions require individuals to identify their state of origin, or their indigeneity, before they can access public services" ... certificates of origin are often required for "registration in schools, award of scholarships, employment and even visa processing" ... "non-indigenes may have difficulty in accessing any number of ... government services, including police protection in case of ethnic violence."¹⁹ [citations omitted]
- [42] Further, In a 2012 report, International Crisis Group reports the following: "[t]he indigene principle, or indigeneity (that is, local origin), means that some groups control power and resources in states or [L]ocal [G]overnment [A]reas (LGAs) while others - who have migrated for different reasons - are excluded". In correspondence with the Research Directorate, an associate professor of sociology at the University of Alberta, whose areas of research include resource conflicts in Nigeria, stated that "[i]ndigeneity is a fundamental issue in Nigeria" and that it "serves as a marker of belonging and [a] pedestal for enjoyment or denial of opportunities".²⁰
- [43] At the RPD hearing, the Principal Appellant testified it would not be possible for him to obtain employment in Port Harcourt. I take note of the fact that unemployment is a serious issue throughout the country, including in Port Harcourt, and is one of the main drivers of migration from Nigeria.²¹
- [44] The RPD correctly noted that the adult Appellants are well-educated, speak English and that their work history generally weighed in their favour in terms of finding work.
- [45] However, I find it likely the Appellants would face restrictions on their ability to find employment and to earn a living in the proposed IFAs due to their being non-indigenes. This would affect their ability to pay for accommodation and for private health care and education for themselves and their children. I find the objective documentation shows the Appellants would face significant barriers in accessing economic opportunities and public services such as education and health care in Port Harcourt due to their indigeneity.
- [46] With regard to the Minor Appellants, currently schools remain closed in Nigeria due to the Covid-19 outbreak with the exception of students scheduled to graduate.²² I find this, along with generally greater barriers to access to education for non-indigenes, is a significant factor which militates against the reasonableness of the proposed IFA for the Minor Appellants.
- [47] I further note that the security situation in Port Harcourt and Rivers State is extremely poor. The Government of Canada warns to avoid non-essential travel to Port Harcourt, due to the unpredictable security situation including the significant risk of terrorism, crime, inter-

communal clashes, armed attacks and kidnappings.²³ I find that as non-indigenes, the Appellants would be more vulnerable to security issues and that the police may not be willing to provide protection. I find that relocation to Port Harcourt does pose a risk to the Appellants' safety and physical security.

- [48] For these reasons, I find that the Appellants face significant risks to their life and safety in relocating to Port Harcourt²⁴ which render the proposed IFA unreasonable.

CONCLUSION

- [49] I allow this appeal and substitute my own determination that the Appellants are Convention refugees pursuant to section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA). (signed) David Morris 2 December 2020 Date 1 Subsection 110(4) of the Immigration and Refugee Protection Act (IRPA). 2 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385 3 <https://www.gatestoneinstitute.org/> Accessed on 25 November 2020. 4 Bridge, A Georgetown University Initiative, "Factsheet: Gatestone Institute", 10 May 2018, accessed on 25 November 2020 at <https://bridge.georgetown.edu/research/factsheet-gatestone-institute/> 5 <https://www.gatestoneinstitute.org/16770/stolen-election> Accessed on 25 November 2020. 6 Media Bias/Fact Check, "Gatestone Institute", 17 January 2020, <https://mediabiasfactcheck.com/gatestone-institute/> Accessed on 26 November 2020. 7 Subsection 110(6) of the IRPA. 8 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 9 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.). 10 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.). 11 Jurisprudential Guide - Decision TB7-19851, Guide identified by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act, Effective date 6 July 2018, at paras 21-30. Re: Internal flight alternatives in major cities in south and central Nigeria for claimants fleeing non-state actors. 12 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Nigeria (20 August 2019), item 1.24, EU EASO, EASO Country of Origin Information Report, Nigeria: Security Situation, November 2018, at pp. 48-49. This document is in the current NDP for Nigeria (31 July 2020), item 1.18. 13 Ibid. 14 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (20 August 2019), item 7.30, at p. 5. Amnesty International, The Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria. This document is in the current NDP for Nigeria (31 July 2020), item 7.30. 15 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (20 August 2019), item 7.31, at p. 1. Immigration and Refugee Board of Canada (IRB), Response to Information Request (RIR)NCA106152.E, 10 August 2018, Fulani herdsman, including motivations, modus operandi and recruitment methods; raids by Fulani herdsman in schools in Benin City in October 2016 (2016-August 2018). This document is in the current NDP for Nigeria (31 July 2020), item 7.31. 16 Ibid. at p.2. 17 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (20 August 2019), item 12.6, at p.1, IRB, Nigeria: Treatment of Christians who relocate from northern parts of Nigeria by people in Port Harcourt [Rivers

State]; whether they face linguistic, economic and social difficulties (2012-November 2013). 18 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (20 August 2019), item 7.20, International Crisis Group, Stopping Nigeria's Spiralling Farmer-Herder Violence. Africa Report No.262, July 26, 2018; item 7.30, Amnesty International, The Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria, December 17, 2018; and item 7.31, IRB, RIR NGA106152.E, August 10, 2018. These documents are in the current NDP for Nigeria (31 July 2020), item 7.20, 7.30 and 7.31. 19 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (31 July 2020), Item 13.1, Response to Information Request (RIR) NGA106361.E, Immigration and Refugee Board of Canada, 30 October 2019, at p. 9, section 4.3. This document does not appear in the version of the NDP (20 August 2019) which was before the RPD. 20 Ibid., at p. 4. 21 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (20 August 2019), item 1.3, at p. 11. EASO COI Meeting Report, Nigeria, Practical Cooperation Meeting, 12-13 June 2017, Rome. This document is in the current NDP for Nigeria (31 July 2020), item 1.3. 22 IRB, Covid-19 Bulletin: Nigeria, 12 August 2020, p. 6. 23 <https://travel.gc.ca/destinations/nigeria>, Accessed 27 November 2020. 24 Singh, Barinder v. M.C.I., 2013 FC 988.

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